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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
7 UNITED STATES OF AMERICA, No. 2:05-CR-0105-LRS-1
8 Plaintiff,
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10 vs.
11 RAUL S. ZAVALA,
12 Defendant/Petitioner.
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**ORDER DENYING PETITIONER'S
SUCCESSIVE §2255 MOTION**

14 Over a decade ago, a jury found Raul Sanchez Zavala guilty of possession
15 with intent to distribute 500 grams or more of methamphetamine in violation of 21
16 U.S.C. § 841(a)(1) and using a communication facility to distribute
17 methamphetamine in violation of 21 U.S.C. § 843(b). He received a mandatory
18 sentence of life imprisonment on the §841(a)(1) conviction and a concurrent 8-year
19 term of imprisonment on the §843(b) conviction. Mr. Zavala appealed his
20 conviction and sentence and has pursued a multitude of post-conviction motions and
21 appeals seeking relief.
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23 Currently before the court is Mr. Zavala's *pro se* "Motion to Correct Illegal
24 Sentence" (ECF No. 260) which challenges the legality of his 8-year sentence on the
25 § 843(b) count. Mr. Zavala contends his sentence exceeds the four-year statutory
26 maximum because the court improperly enhanced his sentence under 21 U.S.C. §
27 843(d)(1) where his prior drug convictions arose under state law, not federal law.
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1 Defendant did not raise this claim as an objection, in his direct appeal or in his §
2 2255 motions. The United States has not responded to the Motion, nor has the court
3 directed service of this Motion on the United States.

4 Article III, § 2, of the Constitution requires the existence of a case or
5 controversy through all stages of federal judicial proceedings. Article III requires a
6 party seeking relief to have suffered, or be threatened with, an actual injury traceable
7 to another party and that a favorable judicial decision likely would redress the injury.
8 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). The sentence Mr.
9 Zavala challenges has been served and expired. Defendant bears the burden to show
10 some “collateral consequences” from the alleged sentencing error. *Spencer v.*
11 *Kemna*, 523 U.S. 1, 7 (1998). Here, there is no indication of collateral consequences
12 of the allegedly excessive sentence, where Mr. Zavala’s life sentence would remain
13 unchanged.
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16 Moreover, this court lacks jurisdiction over successive § 2255 motions
17 without prior authorization from the Ninth Circuit Court of Appeals. Defendant has
18 previously filed two unsuccessful §2255 petitions: ECF No. 193, filed on January
19 12, 2009 and denied on the merits on December 7, 2009 (ECF No. 22); and ECF No.
20 237 filed April 6, 2012 and denied as successive on May 10, 2012 (ECF No. 238).
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22 Accordingly, **IT IS HEREBY ORDERED:**

23 1. Defendant’s Motion is considered a second or successive § 2255 motion
24 and therefore shall be transferred to the Court of Appeals for the Ninth Circuit
25 pursuant to 28 U.S.C. § 1631 and Circuit Rule 22-3(a). Mr. Zavala is advised that
26 this transfer will not by itself constitute compliance with 28 U.S.C. § 2255 and
27 Circuit Rule 22-3. Mr. Zavala must still file an application for leave to proceed with
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1 the Ninth Circuit and make the showing required by § 2255. The Clerk of the Court
2 shall send Mr. Zavala a copy of the Ninth Circuit Form 12.

3 2. The Clerk shall send a copy of this Order to Mr. Zavala and counsel for
4 the Government, and forward this file along with Order to the Clerk of the Ninth
5 Circuit Court of Appeals.

6 3. Defendant's Motion (**ECF No. 260**) is DENIED due to the failure to
7 obtain advance leave from the Ninth Circuit Court of Appeals. Certificate of
8 Appealability is DENIED.

9 4. The Clerk shall close the corresponding civil file, subject to reopening if
10 the Ninth Circuit grants the request to file a second or successive § 2255 Motion.

11 DATED this 26th day of May, 2016.

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14 *s/Lonny R. Suko*
15 LONNY R. SUKO
16 SENIOR UNITED STATES DISTRICT JUDGE
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